



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

January 13, 1986

Dr. Lloyd F. Novick, Director
Arizona Department of Health Services
1740 West Adams Street
Phoenix, AZ 85007

RE: 186-006 (R85-131)

Dear Dr. Novick:

In your letter of September 26, 1985, you requested an opinion concerning Arizona's hazardous waste management act, A.R.S. §§ 36-2821 to 36-2827 (the Arizona Act), and whether it provides sufficient authority for promulgation of state regulations implementing specified provisions of the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-618, 98 Stat. 3221 (1984) (the 1984 Amendments), which amend the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6987 (1976) (RCRA). More specifically, you asked whether existing statutory authority is sufficient to enable the Director of the Arizona Department of Health Services (the Director) to promulgate regulations implementing the following federal requirements:

1. The regulatory provisions set forth in the Environmental Protection Agency's Final Codification Rule, 50 Fed. Reg. 28703-28755 (1985) (EPA's Codification Rule);

Dr. Lloyd F. Novick, Director
January 13, 1986
I86-006
Page 2

2. The regulations concerning small quantity generators of hazardous waste proposed by EPA on August 1, 1985, 50 Fed. Reg. 31278-31306; and
3. The 1984 Amendments' provisions concerning hazardous substances stored in underground tanks.

You also asked whether A.R.S. § 36-2825 authorizes the State of Arizona to criminally enforce the 1984 Amendments.

Rather than individually discussing the more than 55 amendments or additions to the federal hazardous waste regulations contained in EPA's Codification Rule and the small quantity generator regulations, we shall discuss the statutory authority under which the Director can promulgate rules and regulations in this area.

Under the Arizona Act the Director must establish a hazardous waste program equivalent to and consistent with^{1/} federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA. A.R.S. § 36-2822(A). The Arizona Act further requires that the Director "establish criteria and standards for the characteristics, identification, listing, generation, transportation, treatment, storage and disposal of hazardous waste within this state." A.R.S. § 36-2822(B).

The regulatory requirements currently being considered should be examined in relation to both the general directive of A.R.S. § 36-2822(A) and the broad authority vested in the Director under A.R.S. § 36-2822(B) to establish standards and criteria concerning hazardous waste.

Every rule must be supported by sufficient statutory authority. An administrative agency must function in the exercise of its rule-making authority within the parameters of its statutory grant; to otherwise operate would be an administrative usurpation of the constitutional authority of the legislature. Kennecott Copper Corporation v. Industrial Commission of Arizona, 115 Ariz. 184, 564 P.2d 407 (App. 1977); Swift & Company v. State Tax Commission, 105 Ariz. 226, 462 P.2d 775 (1969).

^{1/}We previously concluded that, subject to narrow federal consistency requirements, the Director may promulgate state hazardous waste regulations which are more stringent or more extensive than the federal regulations. See Ariz. Atty. Gen. Op. I84-044.

Dr. Lloyd F. Novick, Director
January 13, 1986
I86-006
Page 3

Nevertheless, it is not necessary that statutes expressly or specifically address each rule which may be promulgated thereunder. The test of whether administrative regulations conform to the authority granted to the agency by the legislature is whether the regulations as adopted may be reasonably implied from a consideration of the statutory scheme as a whole to carry out the purposes and intent of the legislative mandate; it is not necessary that the legislative authority be set out in express terms. Longbridge Investment Company v. Moore, 23 Ariz. App. 353, 533 P.2d 564 (1975), State v. Arizona Mines Supply Co., 107 Ariz. 199, 484 P.2d 619 (1971).

In addition to modifying hazardous waste management requirements (subtitle C of RCRA), the 1984 Amendments create a completely new subtitle which establishes standards for the storage of regulated substances in underground tanks (subtitle I of RCRA).^{2/} These new federal requirements for the storage of regulated substances in underground tanks cannot be implemented at state level by regulations promulgated under the authority of the Arizona Act.

Applicable only to hazardous wastes, the Arizona Act does not extend to "regulated substances" as defined in the 1984 Amendments. The definition of "regulated substances" found in the new subtitle I of RCRA specifically excludes hazardous wastes regulated under subtitle C of RCRA. 42 U.S.C. § 6991(2)(A). Thus, the universe of hazardous wastes defined in and subject to the Arizona Act, A.R.S. § 36-2821(5), being equivalent to and consistent with the universe of hazardous wastes regulated under subtitle C of RCRA, A.R.S. § 36-2822(A), cannot be extended to include regulated substances as defined in subtitle I of RCRA. Additionally, A.R.S. § 36-2822(A) requires that the Director promulgate regulations equivalent to and consistent with federal regulations promulgated pursuant to subtitle C of the federal act. This specific directive does not address or in any way authorize promulgation of regulations equivalent to the federal regulations issued under subtitle I of RCRA.

^{2/}Regulations implementing the initial stages of such requirements are included in EPA's Codification Rule, 50 Fed. Reg. 28755 (1985) (to be codified at 40 C.F.R. pt. 280).

Dr. Lloyd F. Novick, Director
January 13, 1986
I86-006
Page 4

Your final question concerns the State of Arizona's authority under A.R.S. § 36-2825 to criminally enforce the 1984 amendments to RCRA. Rather than authorize state enforcement of RCRA, A.R.S. § 36-2825(A) exempts from state criminal enforcement those activities which are authorized under the federal statute. Thus, regardless of the 1984 amendments, the State of Arizona is not authorized by A.R.S. § 36-2825 to criminally enforce provisions of RCRA.

Sincerely,



BOB CORBIN
Attorney General

BC:PMY:lfc